

EXHIBIT G

THIRD AMENDMENT TO THE COST REIMBURSEMENT AGREEMENT

STATE OF TEXAS

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THIRD AMENDMENT TO THE

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COST REIMBURSEMENT AGREEMENT

COUNTY OF TRAVIS

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THIS THIRD AMENDMENT TO THE COST REIMBURSEMENT AGREEMENT (“**Third Amendment**”) is entered into by and between the **City of Austin**, a Texas municipal corporation (the “**City**”); and Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited liability company, or any other corporation, and any other person acting on behalf of any of the same persons, hereinafter referred as the “**Developer**.” The Developer shall also include any person acting on behalf of, under the control of, or at the direction of any person who holds an interest or rights in the Property (collectively, the “**Parties**”).

**I.
RECITALS:**

- A.** On August 26, 2010, the City Council approved the creation of the Public Improvement District (“**PID**”) for the Whisper Valley project. The PID was created to provide the developer a means to fund infrastructure improvements to the property.
- B.** The City and the Developer entered into the Cost Reimbursement Agreement (as amended by the First Amendment and the Second Amendment, the “**Agreement**”) on June 21, 2007, which provided for the design and construction of wastewater mains and an interim wastewater treatment plant and reimbursement by the City for hard construction costs for the improvements. The Agreement was amended by (i) that certain First Amendment to the Cost Reimbursement Agreement dated October 9, 2009 (“**First Amendment**”) which addressed necessary analysis for the type of wastewater treatment plant to be constructed at the property and (ii) that certain Restated Cost Reimbursement Agreement (Water) and Second Amendment to the Cost Reimbursement Agreement (Wastewater) – Indian Hills and Whisper Valley Subdivisions dated as of November 1, 2010 (“**Second Amendment**”) which allowed the Developer to also be reimbursed by the City for certain wastewater soft costs.
- C.** The Second Amendment also contemplated that the Developer would reimburse the City for those certain wastewater soft costs through certain City issued PID bonds.
- D.** The PID bond structure has changed since the execution of the Second Amendment and therefore, the Second Amendment, as currently written does not accurately describe the types of PID bonds that are anticipated to be issued for the construction of the Wastewater Project. The new bond structure which includes (i) Senior Master PID Bonds and Subordinate Master PID Bonds, which are to be issued up front to fund the Wastewater Project; and (ii) Phased PID Bonds, which will be issued as phases of the Wastewater Project are developed in the future, and which will fund internal improvements in the given phases and may refund all or a portion of the Senior Master PID Bonds. A more definite description of the bond structure is contained in the PID Finance Agreements (as defined below).

- E. On even date herewith, the City and WV Developer have executed that certain Whisper Valley Public Improvement District Finance Agreement (“**PID Finance Agreement**”) which, among other things, describes the types of bonds that the City intends to issue for the Property.
- F. The Parties desire to amend the Agreement to, among other things, reflect changes necessitated by the updated PID bond structure related solely to City reimbursed wastewater costs for the Wastewater Project.

NOW THEREFORE, in consideration of the foregoing premises, the mutual covenants of each party set forth below, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the City and the Developer agree as follows:

II. AGREEMENT

- A. Section 2.11 of the Agreement shall remain as is and the following is hereby added at the end of the existing Section 2.11, to provide consistency between default provisions, and to revise the City’s construction options:

“Notwithstanding anything to the contrary contained herein, with respect to any component of the Wastewater Project for which the reimbursement amount through the Agreement secures the Subordinate Master PID Bonds (pursuant to and as defined in the PID Finance Agreement), if the Developer fails or refuses to timely complete the construction of a given component of the Wastewater Project according to the plans and specifications by the required completion date (subject to Force Majeure and delays caused by the City, including without limitation delays in approving plans and issuing permits), the City shall provide the Developer with written notice of said default and provide thirty (30) days to cure said default; provided, however, if the default cannot reasonably be cured in 30 days, Developer shall have such additional time as is reasonably necessary to cure as long as the Developer commences the cure within 30 days and diligently pursues the same to completion. If Developer has still not completed the applicable component of the Wastewater Project after the notice and cure periods provided for above, the City shall either:

- i. Assume the construction management role and direct the completion of the applicable component of the Wastewater Project so that it qualifies for the agreed upon reimbursement amount specified herein, in which event the reimbursement amount will be funded by the City to the Trustee (as defined in the PID Finance Agreement) and will be used by the Trustee to repay the applicable PID Bonds; or

- ii. Assume the construction management role and direct the closeout of the applicable component of the Wastewater Project as determined by the City so that such component qualifies for a partial reimbursement payment pursuant to Section 3.06(b) (for the work completed) in which event the partial reimbursement amount payment will be funded to the Trustee and together with unspent applicable PID

Bond proceeds in the Project Fund (as defined in the PID Finance Agreement), will be used to fund the repayment of the applicable PID Bonds.

In the event the City assumes the construction management role for a given component of the Wastewater Project (as provided above) then the Developer agrees as follows:

- (1) the City may draw down funds from the Project Fund to complete the component of the Wastewater Project in question;
- (2) all construction contracts, related completion bonds, warranties, plans and specifications, designs, easements, and improvements acquired, produced, or installed in connection with completing such given component of the Wastewater Project by the Developer or its engineers, contractors, or other consultants, and all other personal property and rights associated with the applicable component of the Wastewater Project, will automatically without further action by the Developer become the property of the City;
- (3) the Developer will automatically forgo and release any claims or rights to those items listed in (2) above; and
- (4) the City may draw down on any Fiscal Security posted to complete such component of the Wastewater Project.”

B. The following is hereby added as a new Section 2.14 to the Agreement, to address changes to posting Fiscal Security:

“Notwithstanding anything to the contrary contained herein, with respect to components of the Wastewater Project funded by the Senior Master PID Bonds or the Subordinate Master PID Bonds, if there are funds in a segregated account within a Project Fund sufficient to pay for the completion of a given component, as reasonably determined by the City, it is intended that Developer not be required to post Fiscal Security for the applicable component of the Wastewater Project. For example, if a separate account is formed within the Subordinate Master PID Bond Project Fund for the Interim Whisper Valley WWTP (which fully funds the reimbursement eligible cost of the Interim Whisper Valley WWTP), then no Fiscal Security will be required for the Whisper Valley WWTP. Fiscal Security will still be required for any costs of a given component of the Wastewater Project not deposited in a segregated account within the Project Fund for that component.

The estimated costs for the components of the Wastewater Project funded by the Senior Master PID Bonds or the Subordinate Master PID Bonds shall be determined prior to placement of funds in a segregated account within the Project Fund for the applicable component. If at any time (including if any shortfall becomes evident after construction bids are received) it is reasonably determined by the City that (i) there are insufficient funds contained in a segregated account within a Project Fund to complete the construction of the given component for which the segregated account was established, and (ii) there are no additional bond proceeds available to cover the

shortfall between the funds contained in the segregated account for applicable component and the estimated cost to complete the construction of the applicable component, then the Developer agrees to post Fiscal Security for such shortfall amount prior to the City's reasonable deadline. Until such time that adequate Fiscal Security is posted, the City may withhold, at its discretion, any advances of bond proceeds to the Developer or reimbursements to the Trustee (as defined in the PID Finance Agreement).

- C. The following is hereby added as a new Section 3.06(b) to the Agreement and the existing Section 3.06 shall now be titled "Section 3.06 (a)":

Notwithstanding anything to the contrary, the parties hereby acknowledge that if the City elects to assume the construction management role and elects to direct the close out of the unpaid expenses for the uncompleted components of the Wastewater Project secured by the applicable PID Bonds as provided in subpart (ii) of Section 2.11 above, then the City will pay the Reimbursement Amounts to the Trustee as contemplated in subpart (ii) of Section 2.11 above, despite the fact that the given component of the Wastewater Project has not been completed and finally accepted by the City. The Reimbursement Amount so paid will be calculated on the total PID-eligible costs incurred by the Developer to date for the applicable component of the Wastewater Project as determined by the Director based on contracts, invoices, bills paid affidavits, City reimbursement eligible costs, and related materials submitted to the City by the Developer (and accepted by the City) throughout the construction process. It is hereby further acknowledged that any additional funds expended by the City in order to close out uncompleted components of the Wastewater Project that were eligible to be reimbursed by the City shall be deemed paid for purposes of this Agreement and shall reduce the Maximum Reimbursement Amount on a dollar per dollar basis.

- (i) The following paragraph is added to Section 2.12 of the Agreement:

The Whisper Valley Northwest Line (30-inch wastewater interceptor) may be constructed in a manner in which a component of the line would be constructed, finally accepted by the City, and fiscal security released to the Developer and then the sequence repeated until the necessary portion of wastewater line to provide wastewater service to the particular development phase of the WV Property is completed. The City will work in a cooperative manner with the Developer on this issue, but the City will have sole discretion in the determination of the portion of line for a particular component. All other components of the Wastewater Project will be handled in accordance with the City's standard procedures.

III.

MISCELLEANOUS

- A. **Agreement Provisions.** All other provisions of the Agreement are in full force and effect. In the event of conflict between this Amendment and any provision of the Agreement, this Amendment shall control

- B. Effective Date.** This Amendment will be effective upon execution by all parties.
- C. Defined Terms.** Any capitalized terms used herein and not otherwise defined shall have the meaning ascribed to them in the Agreement.

[Signature Pages to Follow]

CITY OF AUSTIN:

By: _____
Rudy Garza
Assistant City Manager

Date: _____

STATE OF TEXAS)
)
COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2011, by Rudy Garza, Assistant City Manager of the City of Austin, a Texas municipal corporation, on behalf of that municipal corporation.

(SEAL)

Notary Public, State of Texas

[Signatures Continue on Next Page]

CLUB DEAL 120 WHISPER VALLEY, LIMITED PARTNERSHIP

a Delaware limited partnership qualified to do business in Texas

By: CD120 GP, LLC, a Delaware limited liability company

Its: General Partner

By:

Douglas H. Gilliland, Manager

Date:

STATE OF TEXAS)

)

COUNTY OF TRAVIS)

THIS INSTRUMENT was acknowledged before me on this ____ day of _____, 2011, by Douglas H. Gilliland, Manager of CD120 GP, LLC, a Delaware limited liability company, general partner of Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership on behalf of that limited liability company and limited partnership.

(SEAL)

Notary Public, State of Texas

EXHIBIT H

CONTINUING DISCLOSURE AGREEMENT

**CITY OF AUSTIN, TEXAS
SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011
(WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)**

CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement dated as of November 1, 2011 (this “Disclosure Agreement”) is executed and delivered by and among the City of Austin, Texas (the “Issuer”) and Deutsche Bank National Trust Company (the “Trustee”) and Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership (the “Developer”) with respect to the Issuer’s Special Assessment Revenue Bonds, Subordinate Series 2011 (Whisper Valley Public Improvement District) (the “Bonds”). The Issuer, the Trustee and the Developer covenant and agree as follows:

SECTION 1. Purpose of the Disclosure Agreement. This Disclosure Agreement is being executed and delivered by the Issuer, the Trustee and the Developer for the benefit of the Owners and beneficial owners of the Bonds.

SECTION 2. Definitions. In addition to the definitions set forth in the Indenture of Trust dated as of November 1, 2011 (the “Indenture”), which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section, the following capitalized terms shall have the following meanings:

“Annual Bond Disclosure Report” shall mean any Annual Bond Disclosure Report provided by the Issuer pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Disclosure Representative” shall mean the City Treasurer of the Issuer and the general partner of the Developer or his or her designee, or such other officer or employee as the Issuer or the Developer, as applicable, may designate in writing to the Trustee from time to time.

“Dissemination Agent” shall mean the Trustee, or any successor Dissemination Agent designated in writing by the Issuer and which has filed with the Trustee a written acceptance of such designation.

“District” means the Whisper Valley Public Improvement District established by the Issuer and related to the Bonds.

“Fiscal Year” means the calendar year from October 1 through September 30.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” means the Municipal Securities Rulemaking Board.

“Owner” means the registered owner of any Bonds.

“Participating Underwriter” shall mean Piper Jaffray & Co. and its successors and assigns.

“Responsible Officer” shall mean, in the case of the Trustee, the officer or officers specifically administering the Indenture.

“Rule” shall mean Rule 15c2-12 adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Tax-exempt” shall mean that interest on the Bonds is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating any other tax liability, including any alternative minimum tax liability.

“Trustee” shall mean Deutsche Bank National Trust Company, or any successor trustee pursuant to the Indenture.

SECTION 3. Provision of Annual Bond Disclosure Reports.

(a) The Issuer and the Developer shall cause and hereby direct the Dissemination Agent to, not later than six months after the end of the Issuer’s Fiscal Year, commencing with the Fiscal Year ending in 2011, provide to the MSRB, in the electronic or other form required by the MSRB, an Annual Bond Disclosure Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. In each case, the Annual Bond Disclosure Report may be submitted as single document or as separate documents comprising a package and may include by reference other information as provided in Section 4 of this Disclosure Agreement; *provided* that the audited financial statements of the Issuer, if prepared and when available, may be submitted separately from the balance of the Annual Bond Disclosure Report, and later than the date required in this paragraph for the filing of the Annual Bond Disclosure Report if audited financial statements are not available by that date and unaudited financial statements are submitted not later than six months after the end of the Issuer’s Fiscal Year. If the Issuer’s Fiscal Year changes, it shall give notice of such change in the same manner as for a Listed Event under Section 5(d). All documents provided to the MSRB shall be accompanied by identifying information as prescribed by the MSRB.

(b) Not later than ten (10) Business Days prior to the date specified in subsection (a) for providing the Annual Bond Disclosure Report to the MSRB, the Dissemination Agent shall provide the Annual Bond Disclosure Report to the Issuer, the Developer and the Trustee. If by the date specified in this subsection 3(b), the Trustee has not received a copy of the Annual Bond Disclosure Report, the Trustee shall contact the Issuer, the Developer and the Dissemination Agent to determine if the Issuer and the Developer are intending to comply with subsection (a).

(c) If the Trustee is able to verify that an Annual Bond Disclosure Report has not been provided to the MSRB by the date required in subsection (a), the Trustee shall send a notice to the MSRB in substantially the form attached as Exhibit A.

(d) The Dissemination Agent shall:

(i) on behalf of the Issuer prepare and file the Annual Bond Disclosure Report (excluding the audited financial statements of the Issuer, if any, which shall be filed by the Dissemination Agent upon receipt from the Issuer) containing or incorporating by reference the information set forth in Section 4 hereof; and

(ii) file a report with the Issuer, the Developer and (if the Dissemination Agent is not the Trustee) the Trustee certifying that the Annual Bond Disclosure Report has been provided pursuant to this Disclosure Agreement, stating the date it was provided and that it was filed with the MSRB.

SECTION 4. Content of Annual Bond Disclosure Reports. The Annual Bond Disclosure Report for the Bonds shall contain or incorporate by reference, and the Issuer and the Developer agree to provide or cause to be provided to the Dissemination Agent, the following:

(a) If prepared and when available, the audited financial statements of the Issuer for the most recently ended Fiscal Year, prepared in accordance with generally accepted accounting principles applicable from time to time to the Issuer. If audited financial statements of the Issuer are not available by the date required by Section 3(a), the Issuer shall provide unaudited financial statements not later than such date.

(b) Tables setting forth the following information, as of the end of such Fiscal Year:

(i) For the Bonds, the maturity date or dates, the interest rate or rates, the original aggregate principal amount and principal amount remaining Outstanding.

(ii) The amounts in the funds and accounts securing the Bonds and a description of the related investments.

(c) Updates to the information in the final Service and Assessment Plan ("SAP").

(d) Listing of any District property or property owners representing more than five percent (5%) of the levy of Assessments, the amount of the levy of Assessments against such landowners, and the percentage of such Assessments relative to the entire levy of Assessments within the District, all as of the previous October 1.

(e) The result of any foreclosure sales of assessed property within the District.

(f) Any changes to the identity of the Administrator.

(g) The total amount of Assessments on all property subject to Assessments by the Issuer as of the first and last days of such Fiscal Year, together with the amount of Assessments prepaid during such Fiscal Year.

(h) The amount of Annual Installments levied during such Fiscal Year, and assessed valuation and Assessments for all parcels within the District, as of the previous October 1.

(i) The amount of Assessments collected from the property owners during such Fiscal Year.

(j) The amount of Assessment delinquencies greater than six months, one year and two years, and, if delinquencies amount to more than five percent (5%) of aggregate amount of Assessments due in any year, a list of property owners whose Assessments are delinquent.

(k) The amount of delinquent Assessments by Fiscal Year: (1) which are subject to institution of foreclosure proceedings (but as to which such proceedings have not been instituted); (2) which are currently subject to foreclosure proceeding which have not been concluded; (3) which have been reduced to judgment but not collected; and (4) which have been reduced to judgment and collected and the results of any foreclosure sales of assessed property within the District.

(l) The principal and interest paid on the Bonds during the most recent Fiscal Year and the minimum scheduled principal and interest required to be paid on the Bonds in the next Fiscal Year;

(m) Any changes to the methodology for levying the Assessments in the District since the report of the most recent Fiscal Year;

(n) Any changes to the land use designation for the property in the District that might negatively impact its development for those purposes identified in the final SAP, as the same may be amended and supplemental from time to time.

(o) A description of any amendment to this Disclosure Agreement and a copy of any restatements to the Issuer's financial statements.

See Exhibit B hereto for a form for submitting the information set forth in the preceding paragraph.

Any or all of the items listed above may be included by specific reference to other documents, including disclosure documents of debt issues of the Issuer, which have been submitted to and are publicly accessible from the MSRB. If the document included by reference is a final offering document, it must be available from the MSRB. The Issuer shall clearly identify each such other document so included by reference.

SECTION 5. Reporting of Significant Events.

(a) Pursuant to the provisions of this Section 5, each of the following is a Listed Event with respect to the Bonds:

1. Principal and interest payment delinquencies.
2. Non-payment related defaults.
3. Modifications to rights of Bondholders.
4. Optional or unscheduled redemptions or repayments of the Bonds.

5. Defeasances.
6. Rating changes.
7. Unscheduled draws on debt service reserves reflecting financial difficulties.
8. Unscheduled draws on credit enhancements reflecting financial difficulties.
9. Substitution of credit or liquidity providers, or their failure to perform.
10. Release, substitution, or sale of property securing repayment of the Bonds.

11. Adverse tax opinions, the issuance by the IRS of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds.

12. Tender offers to any Bondholder.

13. Bankruptcy, insolvency, receivership or similar event of the Issuer or the Developer.

14. The consummation of a merger, consolidation, or acquisition of the Issuer or the Developer, or the sale of all or substantially all of the assets of the Issuer or the Developer, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material.

15. Appointment of a successor or additional trustee under the Indenture or the change of name of a trustee.

Whenever the Issuer or the Developer obtains knowledge of the occurrence of a Listed Event under number 1, 5, 6, 7, 8, 9, 11, 12, 13 or 14 above, it shall promptly notify the Trustee in writing and the Issuer shall direct the Dissemination Agent to immediately file a notice of such occurrence with the MSRB. Such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event.

Whenever the Issuer or the Developer obtains knowledge of any other Listed Event (under number 2, 3, 4, 10, or 15 above), it shall promptly determine if such event would constitute material information to the Owners of the Bonds. If the Issuer determines that knowledge of the event would be material, it shall immediately notify the Developer, the Trustee and the Dissemination Agent in writing and shall direct the Dissemination Agent to immediately file a notice of such occurrence with the MSRB. Such notice is required to be filed within ten (10) Business Days of the occurrence of such Listed Event.

Any notice under the two (2) preceding paragraphs shall be accompanied with the text of the disclosure that the Issuer desires to make, the written authorization of the Issuer for the Dissemination Agent to disseminate such information as provided herein, and the date the Issuer desires for the

Dissemination Agent to disseminate the information (which date shall not be more than ten (10) Business Days after the occurrence of the Listed Event).

In all cases, the Issuer shall have the sole responsibility for the content, design and other elements comprising substantive contents of all disclosures.

(b) The Trustee shall, within one (1) Business Day of a Responsible Officer obtaining actual knowledge of the occurrence of any Listed Event with respect to the Bonds, notify the Disclosure Representative of such Listed Event. It is agreed and understood that the duty to make the disclosures herein is that of the Issuer or the Developer and not that of the Trustee or the Dissemination Agent. It is agreed and understood that the Trustee has agreed to give the foregoing notice to the Issuer and the Developer as an accommodation to assist it in monitoring the occurrence of such event, but is under no obligation to investigate whether any such event has occurred. As used above, "actual knowledge" means the actual fact or statement of knowing, without a duty to make any investigation with respect thereto. In no event shall the Trustee be liable in damages or in tort to the Participating Underwriter, the Issuer, the Developer or any Bondholder or beneficial owner of any interests in the Bonds as a result of its failure to give the foregoing notice or to give such notice in a timely fashion.

(c) If in response to a request under subsection (b), the Issuer determines that the Listed Event under number 2, 3, 4, 10, or 15 of subparagraph (a) above is not material under applicable federal securities laws, the Issuer shall promptly notify the Developer, the Dissemination Agent and the Trustee in writing and instruct the Dissemination Agent not to report the occurrence pursuant to subsection (d).

(d) If the Dissemination Agent has been instructed by the Issuer to report the occurrence of a Listed Event, the Dissemination Agent shall immediately file a notice of such occurrence with the MSRB.

SECTION 6. Quarterly Reporting Obligations of the Developer. The Developer shall provide, or cause to provide at its cost and expense, to the Administrator and the Dissemination Agent (if different from the Administrator) the information described in this Section 6, and the Dissemination Agent shall, upon receipt from the Developer or its designee, promptly provide such information to the MSRB. The Developer shall provide, or cause to be provided, the information described in paragraphs (i) through (vii) below during the period from the delivery of the Bonds until the later of December 31, 2015 or until such time as the Developer no longer is responsible for the payment of Assessments equal to at least 15% of the annual debt service of the Bonds for any year. Thereafter, the Developer shall provide, or cause to be provided, the information described in paragraph (iv) below until its obligation under this Disclosure Agreement terminates. Such information shall be provided not later than thirty (30) days after each January 1, April 1, July 1 and October 1 (beginning January 1, 2012), and shall include information concerning:

(i) Statement with respect to the Developer or any affiliate of the Developer as to the status of development loans and any permanent financing with respect to any development undertaken by the Developer in the District not financed with Bond proceeds, including loan balance, interest rate, existence of deeds of trust or other similar encumbrances against the property within the District, existence of any default and remaining term;

(ii) Statement as to available funds to complete the District development under construction as contemplated (both Bond financed and non-Bond financed development undertaken by the Developer or any affiliate of the Developer);

(iii) Status of lot sales by type and pricing, as well as anticipated future absorption sales;

(iv) Update of lot ownership composition as set forth within the SAP as well as the number of homes which are completed and/or under construction;

(v) A statement as to material changes, if any, in the form, organization or controlling ownership of the Developer;

(vi) The status of any governmental approvals (other than customary home building permits required after a delivery of a finished lot) required for completion of improvements within the District; and

(vii) Any information regarding the Improvement Projects or other information as may be reasonably requested by the Administrator relating to the ability of the Developer or any affiliate of the Developer to fulfill its obligations under the Indenture or the SAP.

Additionally, the Developer or the Issuer, as applicable, shall provide or cause to be provided filings by the construction manager (who shall be retained by the Developer on a contractual basis or, if there is a failure of the Developer to complete the Improvement Projects and the Issuer assumes construction management, by the Issuer) as follows:

1. Design-Engineering and Construction Project Funds

For each of the Improvement Projects the construction manager will establish an accounting and budgeting system that will show:

(viii) Total expected design and engineering costs;

(ix) Total expected construction budget;

(x) Construction budget allocated to progress "Milestones;"

(xi) Expected design completion date;

(xii) Forecast "bidding" schedule;

(xiii) Forecast commencement of construction;

(xiv) Forecast construction "Milestones" of progress;

(xv) Forecast completion date; and

(xvi) Forecast Issuer acceptance date.

The construction manager shall prepare, within 90 days of the Bond closing, a schedule reflecting the nine points listed above for each of the primary Improvement Projects to be funded by the Bond proceeds, including:

1. Water Line 1;
2. Water Line 2;
3. the Wastewater Interceptor Line;
4. the Wastewater Treatment Plant;
5. Decker Road; and
6. Braker Lane.

Monthly design and construction expenditure progress reports, reflecting the nine points listed above, will be summarized on a quarterly basis and sent to the Trustee, reflecting the progress and conformance with the overall project budget. These quarterly reports will be filed with the Dissemination Agent. Budget overruns in excess of \$250,000 or delays of greater than 60 days will be highlighted and explained and the Developer shall include a plan to remedy the situation.

SECTION 7. Event Reporting Obligations of Developer. Whenever the Developer or an affiliate of the Developer obtains actual knowledge of the occurrence of one or more of the following events, the Developer shall notify, or cause such affiliate to notify, the Administrator and Dissemination Agent (if different from the Administrator) of such occurrences and the Dissemination Agent shall immediately report and file a notice of such event in the manner as provided in Section 5 for the Listed Events specified therein:

(i) Failure to pay any real property taxes or Assessments levied within the District on a parcel owned by the Developer, or an affiliate of the Developer

(ii) Material damage to or destruction of any development or improvements within the District;

(iii) Material default by the Developer or any affiliate of the Developer on any loan with respect to the development or permanent financing of District development undertaken by the Developer or any affiliate of the Developer;

(iv) Material default by the Developer or any affiliate of the Developer on any loan secured by property within the District owned by the Developer or any affiliate of the Developer;

(v) The bankruptcy filing of the Developer or of any affiliate of the Developer or any determination that the Developer or any affiliate of the Developer is unable to pay its debts as they become due;

(vi) The filing of any lawsuit with claim for damage, in excess of \$1,000,000 against the Developer or any affiliate of the Developer which may adversely affect the completion of the District development or litigation which would materially adversely affect the financial condition of the Developer or any affiliate of the Developer; and

(vii) Any change in the legal structure, chief executive officer or controlling ownership of the Developer or any affiliate of the Developer.

For purposes of Section 6 and 7, the term “affiliate” shall mean an entity that owns property within the District and is controlled by, controls, or is under common control of the Developer.

SECTION 8. Termination of Reporting Obligations. The Issuer’s and the Developer’s obligations under this Disclosure Agreement with respect to the Bonds shall terminate upon the legal defeasance, prior redemption or payment in full of the Bonds. If such termination occurs prior to the final maturity of the Bonds, the Issuer shall give notice of such termination in the same manner as for a Listed Event with respect to such series under Section 5(d).

SECTION 9. Dissemination Agent. The Issuer may, from time to time, appoint or engage a Dissemination Agent or successor Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Issuer shall be the Dissemination Agent. The initial Dissemination Agent appointed hereunder shall be the Deutsche Bank National Trust Company.

SECTION 10. Amendment; Waiver. Notwithstanding any other provisions of this Disclosure Agreement, the Issuer, the Developer and the Trustee may amend this Disclosure Agreement with consent of Dissemination Agent (and the Trustee shall not unreasonably withhold its consent to any amendment so requested by the Issuer and the Developer), and any provision of this Disclosure Agreement may be waived, provided that the following conditions are satisfied:

(a) If the amendment or waiver relates to the provisions of Sections 3(a), 4, or 5(a), it may only be made in connection with a change in circumstances that arises from a change in legal requirements, change in law, or change in the identity, nature or status of an obligated person with respect to the Bonds, or the type of business conducted;

(b) The undertaking, as amended or taking into account such waiver, would, in the opinion of nationally recognized bond counsel, have complied with the requirements of the Rule at the time of the delivery of the Bonds, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances; and

(c) The amendment or waiver either (i) is approved by the Owners of the Bonds in the same manner as provided in the Indenture for amendments to the Indenture with the consent of Owners, or (ii) does not, in the opinion of nationally recognized bond counsel, materially impair the interests of the Owners or beneficial owners of the Bonds.

In the event of any amendment or waiver of a provision of this Disclosure Agreement, the Issuer shall describe such amendment in the next related Annual Bond Disclosure Report, and shall

include, as applicable, a narrative explanation of the reason for the amendment or waiver and its impact on the type (or in the case of a change of accounting principles, on the presentation) of financial information or operating data being presented by the Issuer. In addition, if the amendment relates to the accounting principles to be followed in preparing financial statements, (i) notice of such change shall be given in the same manner as for a Listed Event under Section 5(d), and (ii) the Annual Bond Disclosure Report for the year in which the change is made should present a comparison (in narrative form and also, if feasible, in quantitative form) between the financial statements as prepared on the basis of the new accounting principles and those prepared on the basis of the former accounting principles. No amendment which adversely affects the Trustee may be made without its consent (which consent will not be unreasonably withheld or delayed).

SECTION 11. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Issuer from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Bond Disclosure Report or notice of occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Issuer chooses to include any information in any Annual Bond Disclosure Report or notice of occurrence of a Listed Event in addition to that which is specifically required by this Disclosure Agreement, the Issuer shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Bond Disclosure Report or notice of occurrence of a Listed Event.

SECTION 12. Default. In the event of a failure of the Issuer, the Developer or the Trustee to comply with any provision of this Disclosure Agreement, the Dissemination Agent may (and, at the request of any Participating Underwriter or the Owners of at least 25% aggregate principal amount of Outstanding Bonds, shall, upon being indemnified to its satisfaction as provided in the Indenture), or any Owner or beneficial owner of the Bonds may, take such actions as may be necessary and appropriate to cause the Issuer, the Developer or the Trustee, as the case may be, to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture with respect to the Bonds, and the sole remedy under this Disclosure Agreement in the event of any failure of the Issuer, the Developer or the Trustee to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 13. Duties, Immunities and Liabilities of Trustee and Dissemination Agent. Neither the Trustee nor the Dissemination Agent shall have any duty with respect to the content of any disclosures made pursuant to the terms hereof. The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement, and no implied covenants shall be read into this Disclosure Agreement with respect to the Dissemination Agent or the Trustee. To the extent permitted by law, the Issuer and the Developer agree to hold harmless the Dissemination Agent, its officers, directors, employees and agents, against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including attorneys fees) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or willful misconduct. The obligations of the Issuer and the Developer under this Section shall survive resignation or removal of the Dissemination Agent and payment in full of the Bonds. Nothing in this Disclosure Agreement shall be construed to mean or to imply that either the Trustee or the Dissemination Agent is an "obligated person" under the Rule. Neither the Trustee nor the Dissemination Agent is acting in a fiduciary capacity in connection with the performance of their respective obligations hereunder. The fact that the Trustee may have a

banking relationship with the Issuer or the Developer or any person with whom the Issuer or the Developer contracts in connection with the transaction described in the Indenture, apart from the relationship created by the Indenture or this Disclosure Agreement, shall not be construed to mean that the Trustee or a Responsible Officer thereof has actual knowledge of any event described in Section 5 above, except as may be provided by written notice to the Trustee pursuant to this Disclosure Agreement or the Indenture. Neither the Trustee nor the Dissemination Agent shall in any event incur any liability with respect to (i) any action taken or omitted to be taken in good faith upon advice of legal counsel given with respect to any question relating to duties and responsibilities of the Trustee hereunder, or (ii) any action taken or omitted to be taken in reliance upon any document delivered to them and believed to be genuine and to have been signed or presented by the proper party or parties.

The Trustee and the Dissemination Agent may, from time to time, consult with legal counsel of their own choosing in the event of any disagreement or controversy, or question or doubt as to the construction of any of the provisions hereof or their respective duties hereunder, and neither of them shall incur any liability and shall be fully protected in acting in good faith upon the advice of such legal counsel. UNDER NO CIRCUMSTANCES SHALL THE DISSEMINATION AGENT, THE TRUSTEE, THE DEVELOPER, OR THE ISSUER BE LIABLE TO THE OWNER OR BENEFICIAL OWNER OF ANY BOND OR ANY OTHER PERSON, IN CONTRACT OR TORT, FOR DAMAGES RESULTING IN WHOLE OR IN PART FROM ANY BREACH BY THE ISSUER, THE DEVELOPER, THE DISSEMINATION AGENT OR THE TRUSTEE, RESPECTIVELY, WHETHER NEGLIGENT OR WITHOUT FAULT ON ITS PART, OF ANY COVENANT SPECIFIED IN THIS DISCLOSURE AGREEMENT, BUT EVERY RIGHT AND REMEDY OF ANY SUCH PERSON, IN CONTRACT OR TORT, FOR OR ON ACCOUNT OF ANY SUCH BREACH SHALL BE LIMITED TO AN ACTION FOR MANDAMUS OR SPECIFIC PERFORMANCE. THE TRUSTEE IS UNDER NO OBLIGATION NOR IS IT REQUIRED TO BRING SUCH AN ACTION.

SECTION 14. Assessment Timeline. The basic expected timeline for the collection of Assessments and the anticipated procedures for pursuing the collection of delinquent Assessments is set forth in Exhibit C which is intended to illustrate the general procedures expected to be followed in enforcing the payment of delinquent Assessments.

SECTION 15. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Developer, the Trustee, the Dissemination Agent, the Participating Underwriter and the Owners and the beneficial owners from time to time of the Bonds, and shall create no rights in any other person or entity. Nothing in this Disclosure Agreement is intended or shall act to disclaim, waive or otherwise limit the duties of the Issuer under federal and state securities laws.

SECTION 16. Counterparts. This Disclosure Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

[remainder of page left blank intentionally]

CITY OF AUSTIN, TEXAS

By: _____
MARC OTT, City Manager

DEUTSCHE BANK NATIONAL TRUST
COMPANY
(as Trustee and Dissemination Agent)

By: _____
Authorized Officer

CLUB DEAL 120 WHISPER VALLEY,
LIMITED PARTNERSHIP, a Delaware Limited
Partnership qualified to do business in Texas

By: CD 120 GP, LLC, a Delaware limited liability
company qualified to do business in Texas

By: _____

EXHIBIT A

**NOTICE TO MSRB OF FAILURE TO FILE
ANNUAL BOND DISCLOSURE REPORT**

Name of Issuer: City of Austin, Texas

Name of Bond Issue: Special Assessment Revenue Bonds, Subordinate Series 2011
(Whisper Valley Public Improvement District)

Date of Delivery: _____, 2011

NOTICE IS HEREBY GIVEN that the City of Austin, Texas has not provided an Annual Bond Disclosure Report with respect to the above-named bonds as required by the Continuing Disclosure Agreement dated as of _____, 2011, between the Issuer, Club Deal 120 Whisper Valley, Limited Partnership, a Delaware limited partnership (the "Developer"), and Deutsche Bank National Trust Company, as trustee. The Issuer anticipates that the Annual Bond Disclosure Report will be filed by _____.

Dated: _____

_____, on behalf of the City of
Austin, Texas

By: _____

Title: _____

cc: City of Austin, Texas

EXHIBIT B

CITY OF AUSTIN, TEXAS SPECIAL ASSESSMENT REVENUE BONDS, SUBORDINATE SERIES 2011 (WHISPER VALLEY PUBLIC IMPROVEMENT DISTRICT)

ANNUAL BOND DISCLOSURE REPORT*

Delivery Date: _____, 20__

TRUSTEE

Name: _____

Address: _____

City: _____

Telephone: _____

Contact Person: _____

BONDS OUTSTANDING

CUSIP Number	Maturity Date	Interest Rate	Original Principal Amount	Outstanding Principal Amount	Accrued Interest

INVESTMENTS

Fund/ Account Name	Investment Type	Principal Balance	Accrued Interest	Investment Rate	Maturity Date

*Excluding Audited Financial Statements of the Issuer

ASSETS & LIABILITIES OF PLEDGED TRUST ESTATE

Bonds (Principal Balance)

Funds and Accounts [list]

Accrued Interest (if any)

TOTAL ASSETS

LIABILITIES

Outstanding Bond Principal

Accrued Interest (if any)

Outstanding Program Expenses (if any)

TOTAL LIABILITIES

EQUITY

Assets Less Liabilities

Parity Ratio

Form of Accounting ☐ Cash ☐ Accrual ☐ Modified
Accrual

ITEMS REQUIRED BY SECTION 4(c) - (p)

[Insert a line item for each applicable listing]

EXHIBIT C

BASIC TIMELINE FOR ASSESSMENT COLLECTIONS AND PURSUIT OF DELINQUENCIES

<u>Date:</u>	<u>Delinquency Clock:</u>	<u>Activity</u>
Prior to February 1		Assessments are due
February 1	1	Issuer to have received Assessment payments
		Assessments Delinquent if not received
February 5	5	Issuer to forward payments to Trustee as soon as possible after received
February 15	15	Issuer and/or Administrator should be aware of actual and specific delinquencies
February 20	20	Issuer should be aware if Reserve Fund needs to be utilized for debt service payment on March 1. If there is to be a shortfall, the Trustee should be immediately notified and EMMA should be notified.

Issuer should also be aware if, based on collections; there will be a shortfall for September payment.

Issuer and/or Administrator should determine if previously collected surplus funds plus actual collections will be fully adequate for debt service in March and September.

At this point, if total delinquencies are under 5% and if there is adequate funding for March and September payment, no further action is anticipated for collection of Assessments except that Administrator, working with the City Attorney or an appropriate designee, will send supplemental billings/demand letters at least monthly to all delinquent property owners. **For properties delinquent by more than one year or if the delinquency exceeds \$10,000 the matter will be referred for commencement of foreclosure.**

If there are over 5% delinquencies or if there is inadequate funding in the Pledged Revenue Fund for transfer to the Principal and Interest Account of such amounts as shall be required for the full March and September payment, the collection-foreclosure procedure will proceed against all delinquent properties.

March 1

30

Bond interest payment due from January collections.

Reserve Fund payment to Bond Fund may well be required if Assessments are below approximately 50% collection rate

EMMA to be notified if Reserve Fund utilized

for debt service.

Use of Reserve Fund for debt service payment should trigger commencement of foreclosure on delinquent properties.

March 5	35	Issuer to notify Trustee for disclosure to EMMA of all delinquencies.
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March 5	35	If any property owner with ownership of property responsible for more than \$10,000 of the Assessments is delinquent or if a total of delinquencies is over 5%, or if it is expected that Reserve Fund moneys will need to be utilized for either the March or September bond payments, the City Treasurer shall work with City Attorney's office, or the appropriate designee, to commence the collection process for all delinquent Assessments.
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April 15	75	Issuer shall notify Trustee (Trustee shall notify EMMA) of the plan of collections and foreclosure.
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May 1	90	Preliminary Foreclosure activity commences with final demand letters and commencement of actual foreclosure analysis including ordering of title reports, etc.
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If Trustee has not received Foreclosure Schedule and Plan of Collections, Trustee to request same from Issuer.

May 10	100	If Issuer has not provided Trustee with Foreclosure Schedule and Plan of Collections, bondholders (via EMMA) to be notified that foreclosure has not commenced and Trustee to again request that Issuer commence foreclosure or provide plan for collection.
June 1	120	The designated lawyers or law firm will be preparing the formal foreclosure documents and will provide periodic updates to the Trustee for dissemination to those bondholders who have requested to be notified of collections progress. The goal for the foreclosure actions is a filing by no later than June 30 (day 149).
June 30	149	Foreclosure action to be filed with the Courts.
July 1	150	Trustee notified of Foreclosure filing status and notifies EMMA and bondholders.
July 15	160	If bondholders and Trustee have not been notified of a foreclosure action, Trustee will notify bondholders (via EMMA) and Issuer that it is appropriate to file action.

A committee of not less than 25% of the bondholders may request a meeting with the City Treasurer to discuss the Issuer's actions in pursuing the repayment of any delinquencies. This would also occur after day 30 if it is apparent that a Reserve Fund draw is required. Further, if delinquencies exceed 5%, bondholders may also request a meeting with the Issuer at any time to discuss the Issuer's plan and progress on collection and foreclosure activity. If the Issuer is not diligently proceeding with the foreclosure process, the bondholders may seek an action for mandamus or specific performance to direct the Issuer to pursue the collections of delinquent Assessments.